

DA MK  
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601 SW Second Avenue, Suite 2100  
Portland, Oregon 97204-3158  
Telephone: 503.778.2100  
Facsimile: 503.778.2200

Attorneys for Defendants United Rentals, Inc.  
and John Zweigart

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

**ELDON EUGENE CHAMBERS**

**CV'10-62-AA**  
CV No.                     

Plaintiff,

v.

**UNITED RENTALS, INC.,  
JOHN ZWEIGART**

Defendants

Defendant United Rentals, Inc. and John  
Zweigart's  
**NOTICE OF REMOVAL**

(Multnomah County Circuit Court  
Case No. 0912-17246)

Pursuant to 28 U.S.C. §§ 1332, 1441, 1446

TO: United States District Court for the District of Oregon; Clerk of the Multnomah County Circuit Court; and to plaintiff, Eldon Eugene Chambers and his Attorney of Record, Richard Busse, Busse & Hunt.

**PLEASE TAKE NOTICE** that defendants United Rentals, Inc. and John Zweigart remove to this Court the state court action described below.

As grounds for removal, United Rentals, Inc. and John Zweigart (hereinafter Defendants) state as follows:

1. On or about December 17, 2009, an action was commenced in the Circuit Court of the State of Oregon for the County of Multnomah, entitled *Eldon Eugene Chambers v. United Rentals, Inc., and John Zweigart*, Case No. 0912-17246. Pursuant to 28 U.S.C. § 1446(a), all

PAGE 1 - DEFENDANTS' NOTICE OF REMOVAL

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LANE POWELL PC  
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PORTLAND, OREGON 97204-3158  
503.778.2100 FAX: 503.778.2200

state court papers in the Defendants' possession at the time of removal, consisting of the Summonses and Complaint, are attached hereto as **Exhibits 1, 2, and 3**, respectively and made part of this notice.

2. This Notice of Removal is timely filed under 28 U.S.C. § 1446(b), which provides that a notice of removal must be filed within thirty (30) days after a defendant receives, by service or otherwise, the initial pleading. Defendants were served on or after December 21, 2009, which is less than thirty (30) days before their filing of this Notice.

3. No further proceedings have been had in the Circuit Court of the State of Oregon for the County of Multnomah, as of the date of filing of this removal, Defendants have not otherwise appeared in this matter.

4. This is a civil action over which this Court has original jurisdiction under 28 U.S.C. § 1332. This action may be removed pursuant to 28 U.S.C. § 1441 because the action involves a controversy between citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

5. Plaintiff Eldon Eugene Chambers ("Chambers") alleges that he is a resident of the state of Oregon. (Complaint, ¶ 1.)

6. Defendant United Rentals, Inc. was, when the plaintiff filed his Complaint, and is now, a corporation incorporated under the laws of Delaware (Complaint, ¶ 1), with its principal place of business in Connecticut.

7. Plaintiff alleges that defendant Zweigart is a resident of Oregon. Complaint ¶ 2. However, plaintiff has failed to state a cause of action against defendant Zweigart for which he may be individually liable, and therefore, defendant Zweigart is improperly or fraudulently named as a defendant, and such improper joinder cannot be used to defeat diversity jurisdiction. 28 U.S.C. §§ 1332 and 1446; *Wilson v. Republic Iron & Steel Co.*, 257 U.S. 92 (1921); *McCabe v. General Foods Corp.*, 811 F.2d 1336, 1339 (9th Cir 1987). Joinder of a resident defendant is fraudulent if the plaintiff fails to state a cause of action against the defendant, and

PAGE 2 - DEFENDANTS' NOTICE OF REMOVAL

the failure is obvious according to state law. *McCabe v. General Foods Corp.*, 811 F.2d at 1339. Joinder of Zweigart is fraudulent because plaintiff has failed to state any viable cause of action for which Zweigart may be liable under Oregon law. This is shown by the following:

a. Plaintiff's Complaint contains a single cause of action: a claim for discriminatory termination on the basis of age in violation of ORS 659A. Plaintiff's sparse Complaint simply alleges that he was employed by defendant United Rentals, Inc., that his age was a substantial factor in his termination, and that he was terminated in violation of ORS 659A on the basis of his age on or about May 21, 2009. (Complaint, ¶¶ 3, 4.) The Complaint seeks damages for economic loss, emotional distress, and attorneys and expert witness fees. (Complaint, ¶¶ 5, 6, 8.) No other relief is sought.

b. Defendant United Rentals, Inc. is a large, multi-national corporation that is publicly traded and has many employees. Defendant Zweigart is a branch manager at the facility where plaintiff was employed, and was a supervisor of the plaintiff. The Complaint does *not* allege that defendant Zweigart is plaintiff's employer. Consequently, as a matter of settled state law, defendant Zweigart is not a proper party because he is neither an employer, nor is he alleged to be an employer in the Complaint. Under ORS 659A.030(1), it is an unlawful employment practice: "(a) for an *employer* because of an individual's \* \* \* age \* \* \* to refuse to hire or employ or to bar or discharge from employment such individual." ORS 659A.001(4) defines employer as "any person who in the state, directly or through an agent, engages or uses the personal service of one or more employees, reserving the right control the means by which such service is or will be performed." Individuals, including supervisors, are not employers and, therefore, cannot be held liable for state law claims under ORS 659A. *Zasada v. Gap, Inc.*, 2006 WL 2382514 (D. Or.), *citing Reyna v. City of Portland*, 2005 WL 708344 at \*7 (D. Or. March 28, 2005). Thus, the definition of employer under ORS 659A.001(4) does not include individuals such as Zweigart who are managers rather than employers. *Zasada*, at \*2-3. "For

PAGE 3 - DEFENDANTS' NOTICE OF REMOVAL

purposes of diversity jurisdiction, therefore, these individuals are ‘sham’ and ‘fraudulent’ defendants.” *Id.*

c. Plaintiff’s complaint alleges that Zweigart “at all material times acted within the course and scope of his employment for defendant Company.” (Complaint, ¶ 2.) The complaint then goes to make the conclusory allegation that Zweigart “participated in and/or aided and abetted the discrimination alleged herein.” (Complaint, ¶ 2.) Plaintiff’s allegation that Zweigart “participated in and/or aided or abetted” the alleged discrimination is a mere legal conclusion. Such a “formulaic recitation” or “naked assertion devoid of factual enhancement” must be disregarded in determining whether the Complaint plausibly gives rise to entitlement to relief. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949-1950 (2009), *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 557 (2007). See also *Positive Results Marketing v. Buffalo-Lake Erie Wireless System Company*, 2008 U.S. Dist. LEXIS 39924 (M.D. Pa. 2008), and *Bush v. Nationwide Mutual Fire Insurance Company*, 2008 U.S. Dist. LEXIS 61039 (S.D. Miss. 2008) (applying the heightened pleading standard of *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) to fraudulent joinder analysis).

d. Assuming, solely for the sake of argument, that plaintiff’s conclusory allegation that defendant Zweigart “aided or abetted the discrimination alleged herein” is given any consideration by this court, plaintiff’s Complaint still fails to state a cause of action against Zweigart, and this failure is obvious according to settled rules of the state. In *Ballinger v. Klamath Pacific Corp.*, 135 Or. App. 438, rev. den. 322 Or. 360 (1995), the Oregon Court of Appeals held that an individual supervisor could not be liable under ORS 659.030(1)(a) and 659.030(1)(b) in an individual capacity, because the statutory definition of “employer” does not include individuals with supervisory authority. 135 Or. App. at 452. In *Schram v. Albertson’s, Inc.*, 146 Or. App. 415, 424 (1997), the Oregon Court of Appeals affirmed dismissal of claims against two supervisors who allegedly “aided and abetted *and encouraged and directed*” their employer to retaliate and discriminate against the plaintiff because of her gender. The court held

PAGE 4 - DEFENDANTS’ NOTICE OF REMOVAL

that monetary relief (in that case, front pay and back pay for lost wages) could not, as a matter of law, be awarded against individual supervisors. Even if the supervisor's alleged wrongdoing "has caused plaintiff to incur damages, her employer is the entity that benefited, and not the supervisors." Here, as in *Schram*, plaintiff's Complaint seeks only monetary relief against the defendants. Accordingly, no valid claim has been alleged. Moreover, the Complaint also does not allege that the alleged discriminatory conduct was "encouraged and directed" by defendant Zweigart. On that independent basis as well, no valid claim has been, or could be stated. Accordingly, Zweigart has been fraudulently joined, and must be disregarded for diversity purposes.

e. The foregoing statement of reasons as to why Zweigart is a fraudulently joined defendant is made without prejudice to the Defendants' right to assert additional reasons or grounds demonstrating fraudulent joinder, or to offer evidence showing that Zweigart has been fraudulently joined.

f. As a matter of law, plaintiffs have fraudulently joined defendant Zweigart because plaintiff has failed to state a cause of action against him. *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th Cir. 2001). Accordingly, Zweigart is a sham defendant and removal based on diversity of citizenship is appropriate. *Id.*

8. Plaintiff alleges money damages of more than \$75,000, exclusive of interest and costs. (Complaint, ¶¶ 5, 6.)

9. Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, removal of the above-captioned state court action to this Court is appropriate.

10. Pursuant to 28 U.S.C. § 1441(a), removal is made to this Court as the district and division embracing the place where the state action is pending.

11. Pursuant to 28 U.S.C. § 1446(d), Defendants will file a notice of removal with the clerk of the Circuit Court, Multnomah County, Oregon, informing the court that this matter has been removed to federal court. A copy of this Notice of Removal, including all supporting

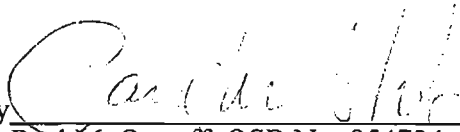
PAGE 5 - DEFENDANTS' NOTICE OF REMOVAL

exhibits, will be attached to Defendants' Notice to Adverse Party of Removal to Federal Court filed with the Circuit Court of the State of Oregon, County of Multnomah. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is also being served upon plaintiff.

THEREFORE, Defendants give notice that the above action now pending against them in the Circuit Court of the State of Oregon, County of Multnomah, has been removed to this Court.

DATED: January 19, 2010

LANE POWELL PC

By   
Paul M. Ostroff, OSB No. 954734  
Telephone: 503.778.2100  
Attorneys for Defendant United Rentals, Inc. and  
John Zweigart

PAGE 6 - DEFENDANTS' NOTICE OF REMOVAL



## In the Circuit Court of the State of Oregon

For the County of MultnomahELDON EUGENE CHAMBERS,

Plaintiff(s),

vs.

UNITED RENTALS, INC., a Delaware  
corporation, and JOHN ZWEIGART,

Defendant(s).

Case No. 0912-17246

SUMMONS

To CORPORATION SERVICE COMPANY285 Liberty Street NESalem, Oregon 97301Registered Agent for United Rentals, Inc.

Defendant

You are hereby required to appear and defend the complaint filed against you in the above entitled action within thirty (30) days from the date of service of this summons upon you, and in case of your failure to do so, for want thereof, plaintiff(s) will apply to the court for the relief demanded in the complaint.

## NOTICE TO THE DEFENDANT: READ THESE PAPERS CAREFULLY!

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal document called a "motion" or "answer." The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service upon the plaintiff.

If you have any questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.

SIGNATURE OF ☒ ATTORNEY ☐ AUTHOR FOR PLAINTIFFRichard C. Busse, OSB #74050

ATTORNEY'S / AUTHOR'S NAME (TYPED OR PRINTED)

BAR NO. (IF ANY)

621 S.W. Morrison Street, Suite 521

ADDRESS

Portland, Oregon 97205 (503) 248-0504

CITY

STATE

ZIP

PHONE

(503)248-2131 rbusse@busseandhunt.com

FAX (IF ANY)

ATTORNEY'S E-MAIL ADDRESS (IF ANY)

TRIAL ATTORNEY IF OTHER THAN ABOVE (TYPED OR PRINTED)

BAR NO.

TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS: You are hereby directed to serve a true copy of this summons, together with a true copy of the complaint mentioned therein, upon the individual(s) or other legal entity(ies) to whom or which this summons is directed, and to make your proof of service on the reverse hereof or upon a separate similar document which you shall attach hereto.

ATTORNEY(S) FOR PLAINTIFF(S)

EXHIBIT 1PAGE 1

According to ORCP 7A, "a true copy of a summons and complaint" means an exact and complete copy of the original documents. No signed certification to that effect is necessary.

Page 1 - SUMMONS.

NO PART OF ANY STEVENS-NESS FORM MAY BE REPRODUCED IN ANY FORM OR BY ANY ELECTRONIC OR MECHANICAL MEANS.

FORM No. 190 - SUMMONS  
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Portland, OR www.stevensness.com EO

10:25

**PROOF OF SERVICE**

STATE OF \_\_\_\_\_ County of \_\_\_\_\_ ) ss.

I hereby certify that I made service of the foregoing summons upon the individuals and other legal entities to be served, named below, by delivering or leaving true copies of the summons and the complaint mentioned therein, certified to be such by the attorney for the plaintiff, as follows:

**Personal Service Upon Individual(s)**

Upon \_\_\_\_\_, by delivering such true copies to \_\_\_\_\_, personally and in person, at \_\_\_\_\_, on \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_M.

Upon \_\_\_\_\_, by delivering such true copies to \_\_\_\_\_, personally and in person, at \_\_\_\_\_, on \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_M.

**Substituted Service Upon Individual(s)\***

Upon \_\_\_\_\_, by delivering such true copies at his/her dwelling house or usual place of abode, to-wit: \_\_\_\_\_, who is a person 14 years of age or older and a member of the household of the person served on \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_M.

Upon \_\_\_\_\_, by delivering such true copies at his/her dwelling house or usual place of abode, to-wit: \_\_\_\_\_, who is a person 14 years of age or older and a member of the household of the person served on \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_M.

**Office Service Upon Individual(s)\***

Upon \_\_\_\_\_, at the office which he/she maintains for the conduct of business at \_\_\_\_\_, by leaving such true copies with \_\_\_\_\_, the person who is apparently in charge, on \_\_\_\_\_, during normal working hours, at \_\_\_\_\_ o'clock \_\_\_\_M.

**Mail Service Upon Individual(s)\*\***

Upon \_\_\_\_\_, by mailing such true copies to him/her by first class mail and ALSO by (check one): ☐ certified or registered mail with return receipt requested ☐ express mail.

**Service Upon Tenant(s) of a Mail Agent\*\*\***

Upon \_\_\_\_\_, by delivering such true copies to \_\_\_\_\_, a person apparently in charge of \_\_\_\_\_, which is the place where the mail agent receives mail for the tenant(s), its address being \_\_\_\_\_ on \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_M. Prior to effecting such service, I made diligent inquiry but could not find the tenant(s) so served.

**Service on Corporations, Limited Partnerships or Unincorporated Associations Subject to Suit Under a Common Name**

Upon \_\_\_\_\_, by \_\_\_\_\_ (NAME OF CORPORATION, LIMITED PARTNERSHIP, ETC.)

(a) delivering such true copies, personally and in person, to \_\_\_\_\_, who is w/the \_\_\_\_\_ (Specify registered agent, officer (by title), director, general partner, managing agent, etc.) thereof; OR

(b) leaving such true copies with \_\_\_\_\_, the person who is apparently in charge of the office of \_\_\_\_\_, who is w/the \_\_\_\_\_ (Specify registered agent, officer (by title), director, general partner, managing agent, etc.) thereof;

at \_\_\_\_\_, on \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_M.

Dated \_\_\_\_\_

Sheriff

By \_\_\_\_\_

Deputy

I further certify that I am a competent person 18 years of age or older and a resident of the state of service or the State of Oregon, and that I am not a party to nor an officer, director or employee of, nor attorney for any party, corporate or otherwise; that the person, firm or corporation served by me is the identical person, firm or corporation named in the action.

Dated \_\_\_\_\_

SIGNATURE

TYPE OR PRINT NAME

ADDRESS

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_ PHONE \_\_\_\_\_

The signature lines on the left should be used only by an Oregon county sheriff or deputy. All other servers should complete the certification on the right. The Proof of Service above contains most, but not all, of the permissible methods of service. For example, this form does not include proof of service upon a minor or incompetent person. See ORCP 7 D for permissible service methods with respect to particular parties.

\*Where substituted or office service is used, the plaintiff, as soon as reasonably possible, shall cause to be mailed, by first class mail, true copies of the summons and the complaint to the defendant at defendant's dwelling house or usual place of abode, together with a statement of the date, time and place at which such service was made. Use S-N Form No. 1149, Notice of Substituted or Office Service, or the equivalent.

\*\*Service by mail may be made when required or allowed by ORCP 7 or by statute, except as otherwise permitted. If the summons and complaint are mailed, this certification may be made either by the person completing the mailing or by the attorney for any party, stating the circumstances of mailing and including the return receipt as an attachment. An attorney completing the mailing should delete "I, nor attorney for" from the last paragraph of this document. Failure to serve a summons in accordance with ORCP 7 and other applicable rules and statutes may affect or nullify the validity of such service.

\*\*\*Where service upon a tenant of a mail agent is used, the plaintiff, as soon as reasonably possible, shall cause to be mailed, by first class mail, true copies of the summons and the complaint to the defendant(s) at the address at which the mail agent receives mail for the defendant(s) and to any other mailing address of the defendant(s) then known to the plaintiff, together with a statement of the date, time, and place at which delivery was made.



Sent By: UNITED RENTALS NORTHWEST INC 263;5039686306;

Dec-21-00 13:27;

Page 2

## In the Circuit Court of the State of Oregon

For the County of MultnomahELDON EUGENE CHAMBERS,

Plaintiff(s),

vs.

UNITED RENTALS, INC., a Delaware  
corporation, and JOHN ZWEIGART,

Defendant(s).

Case No. 0912-17246

SUMMONS

To JOHN ZWEIGART14020 SW 72<sup>nd</sup> AvenuePortland, Oregon 97224-8008

Defendant

You are hereby required to appear and defend the complaint filed against you in the above entitled action within thirty (30) days from the date of service of this summons upon you, and in case of your failure to do so, for want thereof, plaintiff(s) will apply to the court for the relief demanded in the complaint.

## NOTICE TO THE DEFENDANT: READ THESE PAPERS CAREFULLY!

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal document called a "motion" or "answer." The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service upon the plaintiff.

If you have any questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.

SIGNATURE OF ATTORNEY OR AUTHOR FOR PLAINTIFF

Richard C. Busse, OSB #74050

ATTORNEY'S / AUTHOR'S NAME (TYPED OR PRINTED)

BAR NO. (IF ANY)

621 S.W. Morrison Street, Suite 521

ADDRESS

Portland, Oregon 97205 (503) 248-0504

CITY

STATE

ZIP

PHONE

(503)248-2131 rbusse@busseandhunt.com

FAX (IF ANY)

ATTORNEY'S E-MAIL ADDRESS (IF ANY)

TRIAL ATTORNEY IF OTHER THAN ABOVE (TYPED OR PRINTED)

BAR NO.

TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS: You are hereby directed to serve a true copy of this summons, together with a true copy of the complaint mentioned therein, upon the individual(s) or other legal entity(ies) to whom or which this summons is directed, and to make your proof of service on the reverse hereof or upon a separate similar document which you shall attach hereto.

ATTORNEY(S) FOR PLAINTIFF(S)

EXHIBIT 2PAGE 1

Sent By: UNITED RENTALS NORTHWEST INC 263;5039686306;

Dec-21-09 13:27;

Page 3

## PROOF OF SERVICE

STATE OF \_\_\_\_\_, County of \_\_\_\_\_) ss.

I hereby certify that I made service of the foregoing summons upon the individuals and other legal entities to be served, named below, by delivering or leaving true copies of the summons and the complaint mentioned therein, certified to be such by the attorney for the plaintiff, as follows:

## Personal Service Upon Individual(s)

Upon \_\_\_\_\_, by delivering such true copies to \_\_\_\_\_, personally and in person, at \_\_\_\_\_, on \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

Upon \_\_\_\_\_, by delivering such true copies to \_\_\_\_\_, personally and in person, at \_\_\_\_\_, on \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

## Substituted Service Upon Individual(s)\*

Upon \_\_\_\_\_, by delivering such true copies at his/her dwelling house or usual place of abode, to-wit: \_\_\_\_\_, who is a person 14 years of age or older and a member of the household of the person served on \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

Upon \_\_\_\_\_, by delivering such true copies at his/her dwelling house or usual place of abode, to-wit: \_\_\_\_\_, who is a person 14 years of age or older and a member of the household of the person served on \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

## Office Service Upon Individual(s)\*

Upon \_\_\_\_\_, at the office which he/she maintains for the conduct of business at \_\_\_\_\_, by leaving such true copies with \_\_\_\_\_, the person who is apparently in charge, on \_\_\_\_\_, during normal working hours, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

## Mail Service Upon Individual(s)\*\*

Upon \_\_\_\_\_, by mailing such true copies to him/her by first class mail and ALSO by (check one): ☐ certified or registered mail with return receipt requested ☐ express mail.

## Service Upon Tenant(s) of a Mail Agent\*\*\*

Upon \_\_\_\_\_, by delivering such true copies to \_\_\_\_\_, a person apparently in charge of \_\_\_\_\_, which is the place where the mail agent receives mail for the tenant(s), its address being \_\_\_\_\_, on \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M. Prior to effecting such service, I made diligent inquiry but could not find the tenant(s) so served.

## Service on Corporations, Limited Partnerships or Unincorporated Associations Subject to Suit Under a Common Name

Upon \_\_\_\_\_, by \_\_\_\_\_, (NAME OF CORPORATION, LIMITED PARTNERSHIP, ETC.)

(a) delivering such true copies, personally and in person, to \_\_\_\_\_ who is a/the \_\_\_\_\_ (Specify registered agent, officer (by title), director, general partner, managing agent, etc.) thereof; OR

(b) leaving such true copies with \_\_\_\_\_, the person who is apparently in charge of the office of \_\_\_\_\_, who is a/the \_\_\_\_\_ (Specify registered agent, officer (by title), director, general partner, managing agent, etc.) thereof;

at \_\_\_\_\_, on \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

Dated \_\_\_\_\_

I further certify that I am a competent person 18 years of age or older and a resident of the state of service or the State of Oregon, and that I am not a party to nor an officer, director or employee of, nor attorney for any party, corporate or otherwise; that the person, firm or corporation served by me is the identical person, firm or corporation named in the action.

By \_\_\_\_\_ Sheriff

Dated \_\_\_\_\_

By \_\_\_\_\_ Deputy

SIGNATURE

TYPE OR PRINT NAME

ADDRESS

CITY STATE ZIP PHONE

The signature lines on the left should be used only by an Oregon county sheriff or deputy. All other servers should complete the certification on the right. The Proof of Service above contains most, but not all, of the permissible methods of service. For example, this form does not include proof of service upon a minor or incompetent person. See ORCP 7 D for permissible service methods with respect to particular parties.

\*Where substituted or office service is used, the plaintiff, as soon as reasonably possible, shall cause to be mailed, by first class mail, true copies of the summons and the complaint to the defendant at defendant's dwelling house or usual place of abode, together with a statement of the date, time and place at which such service was made. Use S-M Form No. 1149, Notice of Substituted or Office Service, or the equivalent.

\*\*Service by mail may be made when required or allowed by ORCP 7 or by statute, except as otherwise permitted. If the summons and complaint are mailed, this certification may be made either by the person completing the mailing or by the attorney for any party, stating the circumstances of mailing and including the return receipt as an attachment. An attorney completing the mailing should delete "nor attorney for" from the last paragraph of this document. Failure to serve a summons in accordance with ORCP 7 and other applicable rules and statutes may affect or nullify the validity of such service.

\*\*\*Where service upon a tenant of a mail agent is used, the plaintiff, as soon as reasonably possible, shall cause to be mailed, by first class mail, true copies of the summons and the complaint to the defendant(s) at the address at which the mail agent receives mail for the defendant(s) and to any other mailing address of the defendant(s) then known to the plaintiff, together with a statement of the date, time, and place at which delivery was made.

## IN THE CIRCUIT COURT OF THE STATE OF OREGON

## FOR THE COUNTY OF MULTNOMAH

ELDON EUGENE CHAMBERS,

Plaintiff,

v.

UNITED RENTALS, INC., a Delaware  
corporation, and JOHN ZWEIGART,

Defendants.

Case No. **0912-17246**COMPLAINT  
(Age Discrimination)CLAIM NOT SUBJECT TO  
MANDATORY ARBITRATION

Amount of Prayer: \$750,000

Plaintiff alleges:

CLAIM FOR RELIEF

(Age Discrimination - ORS chapter 659A)

1.

Plaintiff is a resident of the State of Oregon.

2.

Defendant United Rentals, Inc. ("Company") is a Delaware corporation registered to do business in Oregon. At all material times said Defendant acted through agents and employees who acted within the course and scope of their agency and employment for said Defendant. Defendant John Zweigart is a resident of the State of Oregon, and at all material times acted within the course and scope of his employment for Defendant Company, and participated in and/or aided and abetted the discrimination alleged herein.

Page

1 - COMPLAINT

BUSSE & HUNT  
Attorneys at Law  
521 AMERICAN BANK BUILDING  
621 S.W. MORRISON STREET  
PORTLAND, OREGON 97205  
TELEPHONE: (503) 248-0504

EXHIBIT

3

PAGE

1

3.

Plaintiff was employed by Defendant Company or its predecessor since January 1977 until his termination by Defendant Company on May 21, 2009.

4.

Plaintiff was 60 years of age at the time of his termination. His age was a substantial factor in his termination.

5.

As a result of that discrimination Plaintiff has suffered and will suffer emotional distress all to his non-economic damage in a sum to be proven at trial, which sum is alleged to be \$500,000.

6.

As a further result of that discrimination, Plaintiff has suffered and will suffer economic loss in a sum to be proven at trial, which sum is alleged to be approximately \$250,000.

7.

Defendants' acts were malicious and/or reckless and Plaintiff reserves the right to allege punitive damages against Defendants.

8.

Plaintiff is entitled to reasonable attorneys' and expert witness fees pursuant to ORS 659A.885 and ORS 20.107, respectively.

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////

1 WHEREFORE, Plaintiff prays for judgment as alleged in the claim stated above.

2 DATED this 15<sup>th</sup> day of December, 2009.

3 BUSSE & HUNT

4  
5  
6   
7 RICHARD C. BUSSE, OSB #74050

8 Telephone: (503) 248-0504

9 *rbusse@busseandhunt.com*

10 Of Attorneys for Plaintiff Eldon Eugene Chambers

11 TRIAL ATTORNEY:

12 RICHARD C. BUSSE, OSB #74050

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 19, 2010, I caused to be served a copy of the foregoing **DEFENDANT UNITED RENTALS, INC. AND JOHN ZWEIGART'S NOTICE OF REMOVAL** on the following person(s) in the manner indicated below at the following address(es):

Richard C. Busse, Esq.  
Busse & Hunt  
621 SW Morrison, Suite 521  
Portland, OR 97205-3808

- ☐ by CM/ECF
- ☐ by Electronic Mail
- ☒ by Facsimile Transmission
- ☒ by First Class Mail
- ☐ by Hand Delivery
- ☐ by Overnight Delivery

  
\_\_\_\_\_  
Paul M. Ostroff

CERTIFICATE OF SERVICE